The case of *Hong v. A. & R. Brown Ltd.*[1] makes it quite clear that there is no hard and fast rule with regard to these cases and the making of a *Bullock Order* was a matter of discretion. Exercising my discretion on the facts and circumstances of this case I therefore refuse to make the order asked for that the plaintiffs recover from the 1st defendants the costs they will have to pay to the 2nd defendants.

I think the situation will be met by my making no further order.

No further order.

Solicitors: *Conaghan, Wreford & Thornton; Presgrave & Matthews; Hogan, Adams & Allan.*

MOHANLAL GORDHANDAS SHETH v. BAN GUAN & CO.

[C.A. (Mathew C.J., Whyatt C.J. (S) and Buhagiar J.) October 14, 1955]

[K. L. — F.M. Civil Appeal No. 30 of 1955]

Practice & Procedure — Civil trial — Application for adjournment — When Court of Appeal can review the order of trial Court refusing adjournment — Injustice to one or other of the parties.

This was an appeal against an interlocutory order of the High Court refusing an adjournment in a civil trial. At the hearing of the appeal fresh evidence was submitted. In the circumstances of the case, —

Held: (1) if the learned Judge had the material before him which was produced before the Court of Appeal, he could have exercised his discretion in favour of the appellant; (2) an injustice might occur in this case if the appellant were deprived of his right to defend the suit and therefore the appeal must be allowed.

Case referred to:—

(1) *Maxwell v. Keun* (1928) 1 K.B. 645.

APPEAL against an interlocutory order.

J. S. H. Skrine for the appellant.

D. G. Rawson for the respondents.

Mathew C.J. (with whom **Whyatt C.J. (S.)** and **Buhagiar J.** agreed): — This is in effect an appeal against an interlocutory order of the Court refusing an adjournment. The learned judge did not have before him the material in support of the appellant's application for an adjournment which we have to-day as a result of admitting further evidence by way of affidavit. The learned judge had every reason to believe on the material before him that the appellant had known of the date of hearing several weeks previously. The learned judge exercised his discretion on what he must have regarded as a flimsy ground, that owing to passport difficulties the appellant could not return from India in time for the hearing of the case.

The case had been fixed by the Registrar on the 7th of May 1955 for hearing on the 7th of June 1955. It is apparent from the affidavits that the appellant was not aware of the hearing date until the 30th of May. This was due to the appellant's solicitor's letter informing him of the date of hearing reaching the appellant by surface mail and not by air mail. It is clear that the appellant could not have reached Kuala Lumpur for the hearing on the due date. It is true that, had the appellant been present on the hearing date, he would have found himself in the position that his amended defence was not before the Court, for sufficient steps had not been taken to file it. But this, in my view, is not material, for the question to be determined was whether the appellant had good grounds for succeeding on his application for an adjournment. Unfortunately, Mr. Skrine who made the application in the Court below was unable to place all relevant facts before the learned judge, as he had not at that stage been provided with all necessary material to support his application.

I am only concerned with the period between the 7th of May and the 7th of June, 1955, and no regard need be paid to the two earlier postponements in the hearing dates, as on the first occasion the case was taken out of the list by the Registrar, and on the second occasion the postponement was the result of leave being granted to amend the statement of defence. The present application was in fact the first application by the appellant for an adjournment.

In exercising its discretionary power to grant adjournments, the Court proceeds on the basis laid down by Atkin L.J. in the case of *Maxwell v. Keun*[1], in the following passage (at p. 657):—

". . . . in the exercise of a proper judicial discretion no judge ought to make such an order as would defeat the rights of a party and destroy them altogether, unless he is satisfied that he has been guilty of such conduct that justice can only be properly done to the other party by coming to that conclusion."

I agree with the following passage of the learned Lord Justice in the same case when he says (at p. 653):—

". . . . . the Court of Appeal ought to be very slow indeed to interfere with the discretion of the learned

Judge on such a question as an adjournment of a trial, and it very seldom does so; but, on the other hand, if it appears that the result of the order made below is to defeat the rights of the parties altogether, and to do that which the Court of Appeal is satisfied would be an injustice to one or other of the parties, then the Court has power to review such an order, and it is, to my mind, its duty to do so."

I am satisfied that if the learned Judge had the material before him which we have to-day, he would have exercised his discretion in favour of the appellant. The fact that he did not have the material before him in no way imputes blame to Mr. Skrine, who had only been instructed by other solicitors to appear and apply for an adjournment, in a letter dated the 4th of June, 1955. I think that an injustice may occur if the appellant is deprived of his right to defend the suit.

I would allow the appeal and reserve the question of the order to be made and the costs to be awarded for further argument.

Appeal allowed.

Solicitors: *Bannon & Bailey; Shearn, Delamore & Co.*

TAN TEIK LEONG v. REG.

[A.Cr.J. (Spenser Wilkinson J.) October 10, 1915]

[Penang — Criminal Appeal No. 36 of 1955]

Road Traffic — Motor Vehicles (Commercial Use) Regulations, reg. 3(5A) — Motor Vehicles Third Party Risks Regulations, reg. 3(1) — Causing to be let on hire a motor vehicle which was not an authorised vehicle — Causing to be used a motor vehicle without there being in force a sufficient policy of insurance in respect of third party risks — Meaning of "causes or permits."

Criminal law — Joinder of charges.

The appellant in this case was charged with a total of six charges, three of them being of causing to be let on hire motor vehicles which were not authorised vehicles contrary to reg. 3(5A) of the Motor Vehicles (Commercial Use) Regulations and three being of causing the said vehicles to be used without there being in force a sufficient policy of insurance in respect of third party risks contrary to reg. 3(1) of the Motor Vehicles Third Party Risks Regulations. The appellant was sentenced on all six charges and he subsequently appealed. On appeal, it was argued (a) that there was a misjoinder of charges which caused prejudice and embarrassment to the accused and (b) the prosecution had not proved its case and the appellant should not have been called upon for his defence.

Held: (1) there was nothing illegal in the joinder of the six charges as the various sections of the Criminal Procedure Code permitting joinder of charges are not mutually exclusive but cumulative; (2) the appellant was not in any way prejudiced in this case by the joinder of the charges; (3) on the facts there was insufficient evidence to prove that the cars were hired at all and even if they were, there was no evidence to show that the appellant caused or permitted the cars to be so used.

Cases referred to:—

(1) *Lim Yean Leong v. Public Prosecutor* (1940) M.L.J. 272.

(2) *Shave v. Rosner* (1954) 2 W.L.R. 1057.

MAGISTRATE'S CRIMINAL APPEAL.

S. Thillaimuthu for the appellant.

D. C. Jackson (Sr. Federal Counsel) for the respondent.

Spenser Wilkinson J.: — The appellant in this case was charged with a total of six charges. Three of these were charges under Regulation 3(5A) of the Motor Vehicles (Commercial Use) Regulations of causing to be let out on hire a motor vehicle which was not an authorised vehicle. The first of these charges was in respect of motor car No. P. 5041 alleged to have been hired out on the 27th February, 1955 and two charges were in respect of motor car No. P. 6633 alleged to have been hired out on the 3rd March, 1955. The other three charges were that in connection with each of these hirings the appellant caused to be used the motor vehicle in question without there being in force a sufficient policy of insurance in respect of third party risks contrary to Regulation 3(1) of the Motor Vehicles Third Party Risks Regulations.

The first point taken on the appeal was that there was a misjoinder of charges, and even if the joinder was not actually illegal it was suggested that it caused prejudice and embarrassment to the accused.

In my opinion, in view of the decided cases on the question of joinder, notably the case of *Lim Yean Leong v. Public Prosecutor*[1] there was nothing illegal in the joinder of these six charges. If as a result of hiring out a motor vehicle that motor vehicle is used without proper insurance then in my opinion the offence of using or causing the use of the motor vehicle without such insurance arises out of the hire transaction. In the case above cited it was decided that the provisions of the various sections permitting joinder of charges are not mutually exclusive but cumulative. Nor do I think that in fact the appellant was in any way prejudiced in the present case by the